Supreme Court, U.S.
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No. 06-

IN THE

Supreme Court of the United States

FIONA FENG CHEN,

Petitioner,

v.

NORTHWESTERN UNIVERSITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

FIONA FENG CHEN
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QUESTIONS PRESENTED

1. Whether petitioner *pro se* was deprived of the Seventh Amendment right to jury trial and the Fourteenth Amendment right to equal protection of the law when petitioner filed the case under §1981 and both Courts stated the case was filed under §1981, but the District Court did not consider §1981 statute of limitation, and the Court of Appeals ordered that petitioner *pro se* waived the argument by not having made the argument before the District Court.

2. a) Whether the lower courts failed the *de novo* standard by time barring petitioner, the nonmoving party's, claims and evidence previously accepted by EEOC. EEOC accepted all of petitioner's claims and evidence from 1999 to 2002 and waived the 300-day limit. The lower courts time barred without addressing to EEOC's prior decision. b) Even with time bar, whether the memo dated July 18, 2001, with a required follow-up meeting date of August 1, 2001 in its content, should be evidence inside the July 28, 2001 time-bar period.

3. Whether petitioner was deprived of the Seventh Amendment right to jury trial and the Fourteenth Amendment right to equal protection of the law when the lower courts did not allow petitioner to prove the prima facie case by comparing to the similarly situated employee named by respondent, the employer.

LIST OF PARTIES

The parties are petitioner Fiona Feng Chen and respondent Northwestern University.

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1. CERTIORARI SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS OF SEVENTH CIRCUIT HAS ENTERED A DECISION TO REQUIRE A PLAINTIFF PRO SE TO

MAKE §1981 LAW ARGUMENT IN ADDITION TO BRINGING SUE UNDER §1981 TO QUALIFY FOR THE PROTECTION OF THE LAW. THIS REQUIREMENT IS CONFLICT TO A RELEVANT DECISION OF THIS COURT AND IN CONFLICT WITH THE DECISION MADE IN LOWER COURT OF ANOTHER CIRCUIT 19

2. **CERTIORARI SHOULD BE GRANTED BECAUSE THERE IS NO PRECEDENCE FOR A DISTRICT COURT TO REVERSE EEOC'S PRIOR DECISION TO FAVOR THE MOVANT AND MEET THE SUMMARY JUDGMENT STANDARD. EVEN IF THERE IS A 300-DAY LIMIT, THERE IS NO PRECEDENCE FOUND TO EXCLUDE THE JULY 18, 2001 MEMO WHICH HAD AN ENDING MEETING REQUIREMENT ON AUGUST 1, 2001, WITHIN THE JULY 28, 2001 LIMIT. THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT** 23

3. **CERTIORARI SHOULD BE GRANTED BECAUSE THERE IS NO PRECEDENCE FOUND FOR THE COURTS TO DISALLOW THE EMPLOYEE TO COMPARE TO THE SIMILARLY SITUATED EMPLOYEE CHOSEN BY THE EMPLOYER. THE UNITED STATES**

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Petitioner Fiona Feng Chen respectfully prays that a writ of *certiorari* issue to review the judgment below.

OPINIONS BELOW

The order of the United States Seventh Circuit Court of Appeals affirming the decision of the United States District Court for the Northern District of Illinois Eastern Division appears at Appendix A, and was unpublished. The judgment of the United States District Court for the Northern District of Illinois appears at Appendix B, and was unpublished. The order of the United States Seventh Circuit Court of Appeals denying petitioner's petition rehearing *en banc* appears at Appendix C, and was unpublished.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Title 28 U.S.C. § 1254, subdivision (1). The decision of a panel of the Court of Appeals was rendered on December 14, 2005. The Court of Appeals denied petitioner's petition of rehearing en banc on January 31, 2006. This petition is timely filed within 90 days of that date.

STATUTORY AND CONSTITUTIONAL PROVISIONS

1. The seventh amendment to the United States Constitution provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

2. The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall "deny

to any person within its jurisdiction the equal protection of the laws."

3. 42 U.S.C. § 1981(a) states:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings for the security of person and property. . . .

The pertinent sections of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Americans with Disability Act of 1990 are reproduced in the Appendix D, at 48a – 50a.

STATEMENT OF THE CASE AND FACTS

I. The basis for federal jurisdiction in the court of first instance

Petitioner, Fiona Feng Chen (Chen), invoked the District Court of Northern Illinois, Eastern Division's jurisdiction under 28 U.S.C. §1391(a), 28 U.S.C. §1331 and 1343(a)(3), 42 U.S.C. §2000e-5(f)(3) to assert claims arising under Title VII, 42 U.S.C. §§ 2000e *et seq.*; in addition, under 42 U.S.C. §1988 for claims under 42 U.S.C. § 1981; and under 42 U.S.C. §12117 for claims under 29 U.S.C. §§ 621 – 634 *et. seq.* ("ADEA") and 42 U.S.C. § 12101 *et seq.* ("ADA").

Petitioner invoked the jurisdiction of the Court of Appeals of Seventh District, under 28 U.S.C. §1291:

1) The final judgment of the District Court was dated February 17, 2005.